

## Maine Revised Statutes

### Title 38: WATERS AND NAVIGATION

#### Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

##### §840. ESTABLISHMENT OF WATER LEVELS

**1. Power.** The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission; [1995, c. 630, §2 (AMD).]

B. [1995, c. 630, §2 (RP).]

C. [1995, c. 630, §2 (RP).]

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 489-E; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams; [2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF).]

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI; or [1995, c. 630, §2 (AMD).]

F. Regulated by the International Joint Commission. [1995, c. 630, §2 (NEW).]

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

[ 2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF) .]

**2. Notice.** The commissioner shall provide written notice of any hearing held pursuant to this section to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The commissioner shall give public notice of the hearing under Title 5, section 9052 and shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §198 (AMD) .]

**3. Conduct of hearing.** The hearing shall follow the procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

[ 1983, c. 417, §6 (NEW) .]

**4. Evidence.** At the hearing, the commissioner shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony is limited to:

- A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 417, §6 (NEW).]
- B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public; [1983, c. 417, §6 (NEW).]
- C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality; [1989, c. 323, §2 (AMD).]
- D. The water levels necessary to prevent the excessive erosion of shorelines; [1983, c. 417, §6 (NEW).]
- E. The water levels necessary to accommodate precipitation and run off of waters; [1983, c. 417, §6 (NEW).]
- F. The water levels necessary to maintain public and private water supplies; [1983, c. 417, §6 (NEW).]
- G. The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power; and [1983, c. 417, §6 (NEW).]
- H. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water. [1983, c. 417, §6 (NEW).]

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §199 (AMD) .]

**5. Order.** Based on the evidence solicited at the hearing, the commissioner shall make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The commissioner shall deliver a copy of the order to the owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall file a copy of the order in the registry of deeds in the county where the dam is located.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §200 (AMD) .]

**6. Appeal.** The commissioner's order may be appealed to the board. The appeal is governed by the provisions of section 341-D, subsection 4.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §201 (NEW) .]

#### SECTION HISTORY

1983, c. 417, §6 (NEW). 1987, c. 118, §11 (AMD). 1987, c. 402, §A205 (AMD). 1989, c. 323, §§1-3 (AMD). 1989, c. 569, §1 (AMD). 1989, c. 890, §§A40, B197-201 (AMD). 1993, c. 370, §§9, 10 (AMD). 1995, c. 630, §2 (AMD). 1999, c. 243, §20 (AMD). 2011, c. 653, §25 (AMD). 2011, c. 653, §33 (AFF).

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